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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. \_\_\_\_\_

Application No.: 10/804,237

Filing Date: March 19, 2004

Appellant: Yonghua Song

Conf. No.:

Group Art Unit: 2816

Examiner: Anh Quan Tra

Title: TEMPERATURE AND PROCESS INDEPENDENT  
CMOS CIRCUIT

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**REPLY BRIEF ON APPEAL**

Mail Stop Appeal Brief-Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

March 6, 2009

Sir:

Pursuant to 37 CFR 1.193(b)(1), Applicant responds to the points raised in the Examiner's Answer mailed January 9, 2009 as follows:

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the Appeal Brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences is contained in the Appeal Brief.

**(3) Status of Claims**

A statement identifying the status of the claims is contained in the Appeal Brief.

**(4) Status of Amendments**

A statement identifying the status of amendments is contained in the Appeal Brief.

**(5) Summary of Claimed Subject Matter**

A summary of the claimed subject matter is contained in the Appeal Brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

A statement identifying the grounds of rejection to be reviewed on appeal is contained in the Appeal Brief.

**(7) Response to Examiner's Answer**

**ARGUMENTS**

In the Examiner's Answer, the Examiner merely alleges that "lack of antecedent basis does not automatically render a claim invalid under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph," and that "in most cases, a...rejection would not be given for a mere lack of antecedent basis." (See Page 4, Lines 13-17 of the Examiner's Answer). Appellant respectfully disagrees. Lack of antecedent basis is specifically listed as a reason for rejection under 35 U.S.C. § 112, second paragraph for causing indefiniteness (see *MPEP* § 706.03(d)), and the Examiner fails to provide any evidence to the contrary.

The Examiner further alleges that “the decision whether the lack of antecedent basis would render a claim invalid under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph is a decision for the Director (i.e., examiner) to make and not the appellant.” (See Page 4, Lines 17-19 of the Examiner’s Answer). Here again:

lack of antecedent basis in a claim can render it invalid under 35 U.S.C. § 112, second paragraph, and correction of such a defect by issue should not have to depend on difference and scope of claim...a patentee should be allowed to correct an error or ambiguity in a claim without having to rely on implication or litigation. Accordingly, **we hold that lack of antecedent basis in claim 11 is proper ground for reissue under 35 U.S.C. § 251.** *In re Altenpohl*, 500 F.2d 1151 (C.C.P.A 1974) at 1156-1157. Emphasis added.

The Examiner continues to ignore this holding and fails to provide any support whatsoever for the allegation that this holding does not apply to the present reissue. Further, the Examiner fails to provide any support for the assertion that the Examiner decides whether the lack of antecedent basis is proper ground for reissue in view of the above holding.

In view of the foregoing, Appellant respectfully submits that the declaration contain a statement of at least one error which is relied upon to support the reissue application and claims 1-45, 47-56, 58-68, and 70-72 should be allowable.

**CONCLUSION**

Accordingly, for at least the aforementioned reasons, Appellant respectfully requests the Board of Patent Appeals and Interferences to reverse the outstanding rejections in connection with the present application and permit each of claims 1-45, 47-56, 58-68, and 70-72 to be passed to allowance in connection with the present application.

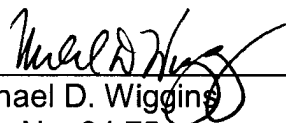
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Damian M. Aquino, Reg. No. 54,964, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By:

  
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